

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN MCINTYRE

VS.

WAL-MART STORES TEXAS, LLC

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CIVIL ACTION NO.

DEFENDANT DEMANDS A JURY

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW, Defendant WAL-MART STORES TEXAS, LLC (incorrectly named WAL-MART STORE TEXAS, LLC, INDIVIDUALLY AND D/B/A WAL-MART SUPERCENTER #1040) (hereinafter “Walmart”), and files this Notice of Removal, pursuant to 28 U.S.C. §§ 1441 and 1446, removing the above-captioned case from the 61st Judicial District Court, Harris County, Texas, to the United States District Court for the Southern District of Texas.

**I.
RELEVANT FACTS**

1. Plaintiff John McIntyre (hereinafter “Plaintiff”) claims that on or about August 27, 2020, he was at a Walmart store located at 15955 Farm to Market Road 529 in Houston, Harris County, Texas, when he stepped on a clear container that was on the floor of the store. *See* Exhibit A, Plaintiff’s Original Petition, at ¶7. Plaintiff further claims that, as a result of stepping on the clear container, he slipped and fell on his knee. *Id.* Plaintiff alleges that, “[a]s a result of the impact (he) suffered injuries to his body.” *Id.*

2. Plaintiff alleges that he is a resident of Harris County, Texas. *Id.* at ¶2. Plaintiff’s lawsuit seeks “monetary relief over \$1,000,000.” *Id.* at ¶18.

II. THE PARTIES

3. As noted, Plaintiff pleaded that he resides in Harris County, Texas. *Id.* at ¶2. As such, Plaintiff is a citizen of the State of Texas.

4. Defendant Wal-Mart Stores Texas, LLC is now, and was at the time of filing of this action, a Delaware Limited Liability Company with its principal place of business in Arkansas. The citizenship of an LLC is the same as the citizenship of all its members. *Harvey v. Grey Wolf Drilling, Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). Wal-Mart Real Estate Business Trust is the sole member of Wal-Mart Stores Texas, LLC.

III. BASIS FOR REMOVAL

5. Walmart removes this case to federal court because there is complete diversity of citizenship between the parties and the amount in controversy is greater than \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a).

A. There is complete diversity of citizenship between Plaintiff and the Defendants.

6. There is complete diversity of citizenship, *see* 28 U.S.C. §§ 1332, 1441, between the Texas Plaintiff and Walmart. As previously noted, Walmart is a citizen of Delaware and Arkansas.

B. The amount in controversy requirement is met.

7. A removing party may establish that the amount in controversy exceeds \$75,000 by showing the non-removing party explicitly sought damages over \$75,000. *See Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 881 (5th Cir. 2000). Here, Plaintiff's lawsuit expressly pleaded that he seeks "monetary relief over \$1,000,000." *Id.* at ¶18. Thus, this requirement has been satisfied.

C. This removal is timely and venue is proper.

8. This Notice of Removal is being filed within 30 days of service of Plaintiff's lawsuit on Walmart, and within one year of the commencement of this action. It is therefore timely. Venue is proper in this District under 28 U.S.C. § 1441(a) because the state court where the action is pending is in this District.

D. Procedural requirements for removal are satisfied

9. Upon filing of this Notice of Removal of the cause, Walmart gave written notice of the filing to Plaintiff and her counsel as required by law. A copy of this Notice is also being filed with the Clerk of the Court of the 61st Judicial District Court, Harris County, Texas, where this cause was originally filed. A copy of all processes, pleadings, and orders has been filed separately with this Court pursuant to 28 U.S.C. § 1446(a).

**IV.
CONCLUSION AND PRAYER**

10. Based on the foregoing, Walmart has established that the amount in controversy exceeds \$75,000.00 and that diversity of citizenship exists between the remaining named parties in this case. Therefore, removal is proper in this case.

Respectfully submitted,

BUSH & RAMIREZ, PLLC

/s/ John A. Ramirez

John A. Ramirez

State Bar No. 00798450

Federal ID No. 21280

Steven J. Maguire

State Bar No. 24106238

Federal ID No. 3172295

5615 Kirby Drive

Suite 900

Houston, Texas 77005

Telephone: (713) 626-1555

Facsimile: (713) 622-8077

jramirez.atty@bushramirez.com

smaguire.atty@bushramirez.com

**ATTORNEYS FOR DEFENDANT
WAL-MART STORES TEXAS, LLC**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument has been sent to all interested counsel of record in accordance with the FEDERAL RULES OF CIVIL PROCEDURE on this 12th day of August, 2022.

Jessica Fritz
Pusch & Nguyen Law Firm PLLC
6330 Gulf Freeway
Houston, Texas 77023

/s/ John A. Ramirez
John A. Ramirez